

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FRED ROHRBACKER,
Plaintiff,

v.

MODERN CONTINENTAL COMPANIES, INC.,)
HARBOR CRUISES, LLC, BOSTON HARBOR)
CRUISES, A JOINT VENTURE,)
PROVINCETOWN PUBLIC PIER CORP., and)
PROVINCETOWN-MACMILLAN REALTY)
TRUST,)
Defendants.)

Civil Action No. 05-11562-RGS

ASSENTED TO MOTION FOR LEAVE TO FILE CROSS CLAIM

Defendant, Provincetown-MacMillan Realty Trust (the "Trust"), hereby moves for an order granting leave to file a cross claim against the Defendant, Harbor Cruises, LLC. As grounds for this Motion, the Trust states:

1. This is an action for personal injury arising out of a slip and fall on property owned by the Trust.
2. The Plaintiff has asserted claims against, among others, the Trust and Co-Defendant, Harbor Cruises, LLC.
3. Harbor Cruises, LLC and the Trust have some common ownership. Since service of the Plaintiff's Complaint, the Trust has undertaken an investigation as to whether it has insurance which would provide a defense to the allegations made by the Plaintiff.
4. In addition, the Trust provided the undersigned with a copy of a lease of the premises where the Plaintiff allegedly fell between the Trust, as landlord, and Harbor Cruises, LLC, as tenant. Under that lease, Harbor Cruises, LLC agreed to indemnify the Trust against

certain damages which include claims for personal injury arising out of an accident which occurred on leased premises.

5. At the time that the Trust filed its Answer to the Complaint, whether and to what extent the Trust had insurance separate and apart from that which covers Harbor Cruises, LLC had not been determined. As of the filing of this Motion, the Trust has not determined whether it has insurance to cover the Plaintiff's claim.

6. The Trust has a valid claim for indemnification and/or contribution against Harbor Cruises, LLC based on the terms of the lease between them and under the applicable law.

7. No party will be prejudiced by the filing of the proposed cross-claim as discovery only recently commenced and is ongoing.

8. Good cause exists for the Court to grant leave for the Trust to file a cross claim against Harbor Cruises, LLC. A copy of the Cross Claim is attached as Exhibit A.

9. Under the Court's scheduling order, all claims must be filed by January 31, 2006.

10. Harbor Cruises, LLC assents to this Motion.

Respectfully submitted,
Provincetown-MacMillan Realty Trust
By its attorneys:

/s/ Kevin T. Smith
Kevin T. Smith

BBO #555507
MASTERMAN, CULBERT & TULLY
One Lewis Wharf
Boston, MA 02110
(617) 227-8010

Assented to:

Harbor Cruises, LLC
By its attorney

**Modern Continental, Harbor Cruises, LLC
and Boston Harbor Cruises**
By its attorney

/s/ Edward B. McGrath
Edward B. McGrath
Burns and Farrey
150 Federal Street
Boston, MA 02110

/s/ Jeanne O. McHugh
Jeanne O. McHugh
Kenner, Engelberg, Bratcher & Whalen
60 State Street, Suite 600
Boston, MA 02109

DATE: January 31, 2006

CERTIFICATE OF SERVICE

I, Kevin T. Smith , hereby certify that I served a true copy of the above Assented to Motion for Leave to File Cross Claim, by first class mail, postage prepaid, to the following counsel of record:

Plaintiff
David J. Berg, Esquire

Latti & Anderson LLP

30-31 Union Wharf
Boston, MA 02109

Provincetown Public Pier Corporation

John J. Davis, Esquire
David C. Hunter, Esquire

Pierce, Davis & Perritano

Ten Winthrop Square
Boston, MA 02110

Modern Continental Companies

Thomas B. Farrey, III, Esquire
Edward B. McGrath

Burns & Farrey

150 Federal Street
Boston, MA 02110

**Modern Continental, Harbor Cruises, LLC and
Boston Harbor Cruises**

Jeanne O. McHugh, Esquire

Kenner, Engelberg, Bratcher & Whalen

60 State Street, Suite 600
Boston, MA 02109

/s/ Kevin T. Smith

Kevin T. Smith

Dated: January 31, 2006

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FRED ROHRBACKER,
Plaintiff,

v.

MODERN CONTINENTAL COMPANIES, INC.,
HARBOR CRUISES, LLC, BOSTON HARBOR
CRUISES, A JOINT VENTURE,
PROVINCETOWN PUBLIC PIER CORP., and
PROVINCETOWN-MACMILLAN REALTY
TRUST,
Defendants.

Civil Action No. 05-11562-RGS

CROSS CLAIM OF DEFENDANT,
PROVINCETOWN-MACMILLAN REALTY TRUST AGAINST
DEFENDANT, HARBOR CRUISES, LLC

Defendant, Provincetown-MacMillan Realty Trust (the "Trust"), hereby files this cross claim against Defendant, Harbor Cruises, LLC, and as grounds therefor states:

1. The Plaintiff has asserted a claim for personal injury against the Trust arising out of an alleged slip and fall on property owned by the Trust.
2. At the time of the Plaintiff's slip and fall, the Trust leased the property where the Plaintiff allegedly fell to Defendant, Harbor Cruises, LLC. The lease between the Trust and Harbor Cruises, LLC contains a provision which requires Harbor Cruises, LLC to maintain the area subject to the lease and to indemnify the Trust in the event of any claim for damages arising out of an alleged fall on or around the leased premises.

Count I

3. In the event that the Plaintiff obtains a judgment against the Trust in this action, those damages were proximately caused, in whole or in part, by the failure to maintain the leased premises or other negligence of the Co-Defendant, Harbor Cruises, LLC.

4. If the Trust is found liable in this action, which liability it denies, then the Trust is entitled to indemnification from Harbor Cruises, LLC based on the terms of the lease and/or the wrongful acts or omissions of Harbor Cruises LLC at common law.

Count II

5. The damages sustained by the Plaintiff, if any, were proximately caused, in whole or in part, by the negligence of the Co-Defendant, Harbor Cruises, LLC.

6. If the Trust is found liable in this action, which liability it denies, then the Trust is entitled to contribution from Harbor Cruises, LLC, as a joint tort-feasor in accordance with M.G.L. c. 231B.

WHEREFORE, the Defendant, Provincetown-MacMillan Realty Trust, demands judgment against Harbor Cruises, LLC for indemnification or contribution with regard to any sums that may be adjudged for the Plaintiff and against Provincetown-MacMillan Realty Trust.

Respectfully submitted,
Provincetown-MacMillan Realty Trust
By its attorneys:

/s/ Kevin T. Smith
Kevin T. Smith
BBO #555507
MASTERMAN, CULBERT & TULLY
One Lewis Wharf
Boston, MA 02110
(617) 227-8010

DATE: January 31, 2006

CERTIFICATE OF SERVICE

I, Kevin T. Smith , hereby certify that I served a true copy of the above Cross Claim of Defendant, Provincetown-MacMillan Realty Trust, Against Harbor Cruises, LLC, by first class mail, postage prepaid, to the following counsel of record:

Plaintiff

David J. Berg, Esquire
Latti & Anderson LLP
30-31 Union Wharf
Boston, MA 02109

Provincetown Public Pier Corporation

John J. Davis, Esquire
David C. Hunter, Esquire
Pierce, Davis & Perritano
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**Modern Continental, Harbor Cruises, LLC and
Boston Harbor Cruises**

Jeanne O. McHugh, Esquire
Kenner, Engelberg, Bratcher & Whalen
60 State Street, Suite 600
Boston, MA 02109

/s/ Kevin T. Smith

Kevin T. Smith

Dated: January 31, 2006